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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/814,099	03/22/2001	Masanori Ikari	010270	2044
23850	7590	02/18/2004	EXAMINER	
ARMSTRONG, KRATZ, QUINTOS, HANSON & BROOKS, LLP 1725 K STREET, NW SUITE 1000 WASHINGTON, DC 20006			NGUYEN, THU V	
			ART UNIT	PAPER NUMBER
			3661	

DATE MAILED: 02/18/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action

Application No.

09/814,099

Applicant(s)

IKARI, MASANORI

Examiner

Thu Nguyen

Art Unit

3661

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 21 January 2004 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☒ The proposed amendment(s) will not be entered because:
(a) ☒ they raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ they raise the issue of new matter (see Note below);
(c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet.

3. ☐ Applicant's reply has overcome the following rejection(s): _____.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☒ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: 2,3,12 and 13.

Claim(s) objected to: _____.

Claim(s) rejected: 1 and 11.

Claim(s) withdrawn from consideration: 4-10.

8. ☒ The drawing correction filed on 22 August 2002 is a) ☒ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____.
10. ☐ Other: _____



Thu Nguyen
Primary Examiner
Art Unit: 3661

* Continuation of 2. NOTE: the correction to claims 1, and 11 change the scope of the claim. Such the changes need further consideration

Continuation of 5. does NOT place the application in condition for allowance because: in response to applicant's argument on page 18; page 19, last paragraph; page 20, first and second paragraph, Kinugawa does teach the load judging portion, because, claim 1 claims a load judging portion that detects whether the vehicle is under excavation. In col.14, lines 34-37, in combination with col.19, lines 1-6, Kinugawa teaches classification of works of the hydraulic excavator based on the data detected from the sensors sensing operation of the boom, the bucket, etc. The classification of works is clearly a load judging portion because the classification procedure of Kinugawa can recognize the excavation condition of the vehicle (col.25-30 of Kinugawa teaches how the operating condition (the excavating condition, the scattering condition, etc.) are recognized); specifically, col.26, lines 45-56 shows how the excavating condition (the simple digging) of the vehicle is recognized. Therefore, the classification of work discrimination section 41' (fig.3) is the claimed load judging section. Although the applicant asserts that the section 41' is not the same as the loading judging portion, however, both the explanation and the claimed language describing the loading judging portion fail to highlight the difference between the portion 41' (fig.2) of Kinugawa and the load judging section of the present application. In response to applicant's argument on page 19, first two paragraphs, page 20, last paragraph; page 21, first two paragraphs, independent claim 11 just claims the automatic excavation control means as a means capable of outputting the excavation command value to each of the control valves. In col.35, lines 35-40, Kinugawa clearly teaches an automatic excavation control means which automatically control the vehicle suitable to the detected classification of works. Since one classification of works is simple digging (simple excavation) (col.30, lines 41-42), and since the automatic excavation control means of Kinugawa is capable of sending control parameters to the pump according to the excavation status (col.33, lines 35-67, especially in table I), further, since the hydraulic pump actually control the valves (col.17, lines 58-67; col.18, lines 1-2), the automatic excavation control means of Kinugawa is clearly capable of outputting the control command to the valves through the control of the pumps 2 and 3 (fig.1). The cited section in page 20, last paragraph, and page 21, first two paragraphs shows returning the operating levers 17-22 to neutral (zero position) from an operating condition (note that the lever 17 (fig.1) represents the boom lever), since Kinugawa teaches detecting the data from the levers every predetermined period of time and use such the data in determining excavation condition of the vehicle (col.27, lines 30-45), Kinugawa obviously teaches the capability to detect excavation condition (the classification state of the vehicle) when the boom lever changes from a position to the neutral position.